THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14236 of 2002

Dated:30.08.2007

Between:

V.Kishore Chandra Deo,
and others.

…Petitioners

and

The District Collector,
Visakhapatnam,
and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14236 of 2002

ORDER:

The petitioners are owners of land admeasuring Acs.9.00 in T.S.No.125 situated at Pedawaltair Ward of Visakhapatnam. They filed declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), in C.C.Nos.2449/76, 2450/76, 7041/81 to 7047/81. They allege that the second respondent passed orders under Section 8(4) read with Section 9 of the Act on 17.04.2000 without giving an opportunity to the petitioners to file their objections. They filed W.P.No.4398 of 1996 with that grievance. The same was disposed of, and thereafter, the petitioners filed objections, and the second respondent passed final orders under Section 9 of the Act. He also issued notices under Sections 10(1) and 10(3) of the Act. In the meanwhile, the petitioners preferred an appeal before the Commissioner of Appeals. The same was allowed, and the matter was remitted to the second respondent, who again passed orders on 07.12.2001, determining the petitioners to be surplus holders of 4813.68 square metres in T.S.No.125/p insofar as the first petitioner and his mother are concerned, and insofar as the third petitioner is concerned, she was declared surplus vacant holder in an extent of

2823 square metres. The petitioners allegedly preferred an appeal against this order before the Commissioner of Appeals, which they allege that it is still pending. In the meanwhile, one week prior to filing of the Writ Petition, respondents 4 and 5 allegedly tried to dispossess the petitioners, on the ground that the land is allotted to them. Therefore, in this Writ Petition, the petitioners seek a writ of mandamus declaring the action of the respondents in allotting the land in an extent of 6000 square yards in T.S.No.125 of Pedawaltair Ward, to respondents 4 and 5 as illegal and arbitrary.

The Special Officer of Visakhapatnam Urban Agglomeration has filed counter affidavit. The averments of the petitioners with regard to filing of declaration, final orders under Section 8(4) of the Act, the remand made by the appellate authority, and passing of subsequent order on 07.12.2001 are admitted. It is, however, denied that the petitioners filed appeal before the appellate authority against the proceedings dated 07.12.2001. It is also stated that after determining surplus land following the procedure, the land was taken possession and was handed over to the fifth respondent. It is further stated that the land allotted and handed over to the fifth respondent is part of the surplus land declared by the second respondent in the final order dated 07.12.2001. Though counter affidavit is filed on 21.07.2007, reply affidavit is not filed by the petitioners.

The petitioners have not placed any material in proof of their allegation that they preferred an appeal before the Commissioner of Land Administration against the final order of the second respondent dated 07.12.2001. Even assuming that such an appeal is filed, the remedy of the petitioners is to approach the appellate authority and seek appropriate orders regarding stay of proceedings/order passed by the second respondent. They did not do so. They straightaway filed the present Writ Petition. Secondly, assuming that they preferred an appeal before the Commissioner of Appeals under Section 33 of the Act, when once a person files an appeal as provided under the statute, a Writ Petition would not be maintainable simultaneously. On this ground alone, this Writ Petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

30.08.2007
vs